

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION
9174 Sky Park Court, Suite 100
San Diego, California 92123

MINUTES OF MEETING
November 12, 2003

The regular meeting of the California Regional Water Quality Control Board, San Diego Region, was called to order by Acting Chairman Stephany at 9:05 a.m. at the Regional Water Quality Control Board, 9174 Sky Park Court, San Diego, California.

Chairman Stephany welcomed Jennifer Adams-Brooks to the Board.

Item 1 – Roll Call: Board Members Present: Gary Stephany, Eric Anderson, Janet Keller, Terese Ghio, Richard Wright and Jennifer Adams-Brooks.

Staff Present: John Robertus, Arthur Coe, Michael McCann, Lori Costa, David Barker, Mark Alpert, John Anderson, Bob Morris, Deborah Jayne, Brian Kelley, John Odermatt, Pete Michael, Bruce Posthumus, Craig Carlisle, David Gibson, Rebecca Stewart, Frank Melbourn, Laurie Walsh, Victor Vasquez, Amy Grove, Christopher Means, David Hanson, Eric Becker, Mike Porter, Brian McDaniel, Lisa Honma, Megan Quigley, Deborah Woodward, Jeremy Haas, Carol Tamaki, Tom Alo, Brennan Ott and Christina Arias.

Others Present on behalf of the Regional Board: State Water Resources Control Board – John Richards. Park Avenue Deposition Service: Grace Verhoeven. Public Attendance: Roger von Butow, South Orange County Watershed Conservancy; Pam Tappan, Save Our Wetlands Now; Pamela Raptis, San Diego County; Nancy Palmer, City of Laguna Niguel; Scott Andrews, Mission Bay Park Toxic Cleanup; Terry Hirschag, Pioneer Builders; Albert Huang, Laura Hunter, Environmental Health Coalition; John Wilks, Sierra Club; Don May, California Earth Cores; Peter Olah, Ashby USA; Eric Fordham, Rob Johnson, PSOMAS; Mike Tope, CA State Parks; Dave Levine, Jim Bollinger, Gabe Heflin, Pat Sly, Ken Tonkovich, Karanai Jazdzewski, Bob Andrade, Arnold Zavitz, Steven Zavitz, Margo Zavitz, Jerry Montgomery, Gloria Rios, Delia Fant, Martha Montgomery, Mary Crotuers, O.C. Crotuers, Ray Neumann, Mary Neumann, Lois Beeman, Vicki Gorham, John Santo, Penny Welton, Carla Madden, Judy Wallace, Mike Baumann, Dave French, Ron Davis, Marlon Showalter, Maureen Buffington,

Jeanne Hansen, Mitchell Drasco, Jeanette Miller, Michael Welch, Chris Shelbrack, David Ward, Public; Wayne Rosenbaum, Norm Hantzche, El Morro Community Assoc; Joan Brackin, T.A.O Technologies; Barbara Bradley, Advanced Onsite Systems; Ray Saatjian, WMA; Mike Kaylor, Mill/ADL Kaylor; Richard Dietmeier, South Coast Water District; Eric Lazarus, Luke Olts, Karen Skaret, D. Schiff, University of San Diego; Neil Mohr, San Diego Landfill System; Ranny Eckstrom, Caltrans; Glenn Moeller, CSUS; Madeline Kass, Thomas Jefferson Law School; Anne Lee, Foley & Lardner; Keith Carlson, MACTEC; Jeff Parks, Encina Wastewater Authority; Pat Owen, Sea World; Tim LaFranchi, State Department of Parks & Recreation; Mark Weston, Helix Water District; Michael Hazzard, Kristar; Patti Krebs, Industrial Environmental Association; Steve Carlson, AMEC; Ruth Kolb, Karen Henry, City of San Diego; Vince Buchanan, Ryland Homes; Michael Thompson, TJSJL; Sam Duran, Ryan Cebulski, Urban Corps of San Diego; Timothy Nelligan, EQC; Dave Seymour, SMWD; Larry Dees, Moulton Niguel Water; Khalique Kan, Melanie Bengtson, Camp Pendleton; David Merk, Port District and Rich Boylan, State Water Board.

Chairman Stephany announced that John Minan would be joining the meeting as soon as he returned from the San Diego River Conservancy Board meeting.

Item 2 – Public Forum

Roger von Butow, South Orange County Watershed Conservancy, talked about the Conservancy, its members and read their mission statement.

John Wilks, San Diego Sierra Club, requested that an item be put on a future agenda to allow them to make a lengthy presentation on the City's former south shore landfill where toxic chemicals were dumped.

Ms. Ghio asked Mr. Robertus to comment on Mr. Wilks request. Mr. Robertus said he didn't feel a presentation to the Board would be necessary as all the information had already been provided to the Board in the November Executive Officer's Report.

Chairman Stephany asked Mr. Robertus to keep the Board apprised of any updates on the landfill issue that Mr. Wilks addressed.

Albert Huang, Environmental Health Coalition, talked about the environmental justice guidelines adopted by CalEPA.

Ms Ghio said she attended a few of the meetings held in Sacramento on the guidelines that Mr. Huang talked about then asked him to define the purpose of the precautionary principle. Mr. Huang replied.

Chairman Stephany suggested that an item be put on a future agenda that would allow the Board to discuss the guidelines that Mr. Huang spoke about.

Pam Tappan, Save Our Wetlands Now in Dana Point, talked about the complaint that she brought to the Board's attention on the destruction of a wetland in Capistrano Beach by Pioneer Builders. Ms. Tappan said she had additional information to submit to the Board. Chairman Stephany reminded Ms. Tappan that the public hearing was closed and that the item was on the agenda to be heard later in the day. Staff Counsel Richards suggested that Ms. Tappan speak during Item 16 and make her request to submit additional information at that time.

Don May, California Earth Core, said they were concerned about the former industrial dumpsite in south shore Mission Bay and asked that staff take a closer look at the area.

Scott Andrews, Mission Bay Park Toxic Cleanup, also talked about the toxic dumpsite in Mission Bay and noted some health concerns that were brought to his attention.

Item 3 – Minutes of Board Meetings of August 13 and September 10, 2003

This record of the minutes of the meeting on this date is not intended for the official record of events and is solely for administrative convenience. A more detailed account of the proceedings is available upon request, consisting of a tape recording and a court reporter transcribed record. Please contact the Regional Board office for assistance.

Ms. Ghio moved approval of the August 13, 2003 minutes. The motion was seconded by Ms. Keller and approved by unanimous vote.

Ms. Keller moved approval of the September 10, 2003 minutes. The motion was seconded by Mr. Anderson and approved by unanimous vote.

Item 4 – Chairman's, Board Member's, State Board Liaison's and Executive Officer's Reports.

Chairman Stephany said he and a few other Board Members attended the Water Quality Coordinating Committee meeting in Sacramento. Ms. Adams-Brooks said she attended and appreciated the meeting.

Mr. Robertus spoke about Compliance of Power Plants in the San Diego Region with Clean Water Act Section 316(a) and 316(b) Requirements (B-6) from the October report. He also spoke about several items from the November report which included: Non-Payment of Liability by Castillo & Sons (B-5), State Board Increases Annual Fees (B-9), NASSCO and Southwest Marine Shipyards (B-12), San Diego Wildfires (B-1 & B-8), and Sanitary Sewer Overflows (B-3).

Consent Items 5 through 13:

Chairman Stephany announced that there was a request to pull Item 11 from the Consent Calendar and that Item 13 was also taken off consent.

Item 5 - A Resolution requesting two hundred sixty thousand dollars from the State Water Resources Control Board's Cleanup and Abatement Account fund to assess atmospheric deposition, measure flow, and collect water quality data, perform modeling, and develop cleanup levels for the mouth of Chollas Creek in San Diego Bay. (Tentative Resolution No. R9-2003-0312) (Brennan Ott)

Item 6 - A Resolution requesting fifty four thousand dollars from the State Water Resources Control Board's Cleanup and Abatement Account fund to study marine sediment cleanup levels in San Diego Bay. (Tentative Resolution No. R9-2003-0315) (Brennan Ott)

Item 7 - NPDES Permit Revisions: Addenda to the NPDES permits for agencies discharging wastewater to the Pacific Ocean, indicated below, to increase surf zone monitoring frequencies and adopt "Standard Operating Procedures for the Collection of Water Samples for Bacterial Analysis from Ocean and Bay Receiving Waters" developed by County of San Diego Department of Environmental Health. (Victor Vasquez)

a. Encina Wastewater Authority Discharge to the Pacific Ocean through the Encina Ocean Outfall (tentative Addendum No. 3 to Order No. 2000-036, NPDES No. CA0107395)

b. Fallbrook Public Utility District Discharge to the Pacific Ocean via the Oceanside Ocean Outfall (tentative Addendum No. 1 to Order No. 2000-012, NPDES No. CA0108031)

c. City of Oceanside Discharge to the Pacific Ocean via the Oceanside Ocean Outfall (tentative Addendum No. 2 to Order No. 2000-011, NPDES No. CA0107433)

d. United States Marine Corps Base Camp Pendleton Discharge to the Pacific Ocean via the Oceanside Ocean Outfall (tentative Addendum No. 1 to Order No. R9-2003-0155, NPDES No. CA0109347)

Item 8 - NPDES Permit Reissuance: Padre Dam Municipal Water District, Padre Dam Water Recycling Facility, Discharge to Sycamore Creek and the San Diego River, San Diego County (tentative Order No. R9-2003-0179, NPDES No. CA0107492) (David Hanson)

Item 9 - Revision of Waste Discharge Requirements: Rancho California Water District Wastewater Reclamation Facilities, Riverside County (tentative Addendum No. 4 to Order No. 94-92) (Brian Kelley)

Item 10 - Modification to Waste Discharge Requirements: General Waste Discharge Requirements for Post-Closure Maintenance of Inactive Landfills Containing Hazardous and Nonhazardous Wastes within the San Diego Region: Former MCRD/NTC Landfill (change in discharger), Rainbow Canyon Landfill (change in owner), and San Pasqual Academy Burn Ash Site (new enrollee) (tentative Addendum No. 4 to Order No. 97-11) (Brian McDaniel)

Item 12 - Settlement of liability against Ryland Homes of California, Inc. for violation of Water Code sections 13376, 13267, and 13383 and SWRCB Order No. 99-08-DWQ, Waste Discharge Requirements for discharges of storm water runoff associated with construction activity, Serenada Development, Murrieta, Riverside County. The Regional Board will consider accepting a proposed settlement for the liability. If the Regional Board decides to reject the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Resolution No. R9-2003-0291) (Frank Melbourn)

Mr. Wright moved approval of Items 5 – 10 and 12 with errata. The motion was seconded by Ms. Ghio and approved by unanimous vote.

Remainder of the Agenda (Non-Consent Items):

Item 13a - Tentative Resolution No. R9-2003-0391: An Emergency Temporary Conditional Waiver of Statutory Requirements to File a Report of Waste Discharge and the Adoption of Waste Discharge Requirements for Management and Disposal of Solid Wastes from the 2003 Wildfire Destruction in the San Diego Region. (Laurie Walsh)

Mr. Robertus introduced the item and staff member Laurie Walsh gave the presentation.

Board Members asked questions and made comments.

Pamela Raptis, County of San Diego, said the County had already issued emergency waivers and requested approval of the Resolution.

Mr. Wright moved approval of Resolution No. R9-2003-0391. The motion was seconded by Ms. Ghio and approved by unanimous vote.

Item 11 - Modification to Cease and Desist Order: California Department of Transportation, San Joaquin Hills Transportation Corridor (SR-73), Orange County (revision to monitoring requirements) (tentative Addendum No. 1 to Cease and Desist Order No. 2001-198) (Christopher Means)

Chairman Stephany announced that the request to pull Item 11 from the Consent Calendar was rescinded.

Ms. Ghio moved approval of Addendum No. 1 to Cease and Desist Order No. 2001-198 as part of the Consent Calendar. The motion was seconded by Mr. Wright and approved by unanimous vote.

Item 14 - Waste Discharge Requirements: California Dept. of Parks and Recreation, Crystal Cove State Park, El Morro Trailer Park, Orange County (tentative Order No. R9-2003-0228) (Victor Vasquez)

Mr. Robertus introduced the item and staff member Victor Vasquez gave the presentation.

Other speakers included:

Rob Johnson, Pentech

Eric Fordham, Pentech

Mike Tope, California State Parks

Wayne Rosenbaum, attorney for El Morro Community Assoc.

Joan Brackin, T.A.O. Technologies

Barbara Bradley, Advanced Onsite Systems

Norm Hantzsche, Questa Engineering Corporation

Chairman Minan arrived at 11:35 a.m.

Wayne Rosenbaum and Barbara Bradley answered questions asked by the Board.

Ray Saatjian, Western Manufactured Housing Communities Assoc.

Mitch Drasco, El Morro Community Association

Jeanette Miller, El Morro Community Association

David Levine, El Morro Village

Michael Kaylor, El Morro Village

Gabe Heflin, El Morro Village

Pat Sly, El Morro Village

Jim Bollinger, El Morro Village

Roger von Butow, South Orange County Watershed Conservancy

The meeting was recessed for lunch and Executive Session at 12:08.

Item 21 – *Executive Session* - Discussion of Ongoing Litigation

The Regional Board may meet in closed session to discuss ongoing litigation for the following cases:

People of the State of California Ex Rel. the Regional Water Quality Control Board, San Diego Region v. Robert Ortega, an individual in his capacity as Acting Commissioner of the International Boundary and Water Commission, United States Section, et al.. United States District Court, Southern District of California, Case No. 01-CV-027BTM(JFS); violation of effluent limits in waste discharge requirements for the International Wastewater Treatment Plant contained in Order No. 96-50 (NPDES No. CA0108928) and of Cease and Desist Order No. 96-52; Referral Order No. 99-61; and the related “Surfrider” case:

Surfrider Foundation, San Diego Chapter v. Robert Ortega, et al., Case No. 99-CV-2441-BTM(JFS)

Rakhra Groups, Inc., v. San Diego Regional Water Quality Control Board
Superior Court of California, San Diego County; Case No. GIC 776251 and Case
No. GIC 786516

*San Diego BayKeeper and Surfrider Foundation, San Diego Chapter v. City of San
Diego*; U.S. District Court, Southern District of California; Case No. 01-CV-0550-
B (POR)

Item 23 – *Executive Session* - Discussion of Pending Litigation

The Regional Board may meet in closed session to discuss pending litigation.

*Fallbrook Public Utilities District v. State Water Resources Control Board and
Regional Water Quality Control Board, San Diego Region*

The meeting reconvened at 1:00 p.m.

Chairman Stephany announced that during Item 21-Executive Session the Board discussed the following cases: International Boundary and Water Commission, City of San Diego, William Johnson and the Building Industry Association. During Item 22-Executive Session the Board discussed the Fallbrook Public Utilities District litigation.

Item 14 (continued)

Victor Vasquez made closing comments.

Richard Rozelle, California State Parks, answered questions asked by the Board.

Board Members asked questions of Mr. Vasquez including groundwater objective questions.

The Public Hearing was closed.

Ms. Ghio requested that deliberation by the Board be deferred until after staff gave the presentation for Item 15. The Board concurred.

Item 15 - PUBLIC HEARING: Cease and Desist Order, California Dept. of Parks and Recreation, Crystal Cove State Park, El Morro Trailer Park, Orange County (tentative Order No. R9-2003-0285) (Victor Vasquez)

Staff member Victor Vasquez gave a brief presentation.

Other speakers included:

Mike Tope, California State Parks

Wayne Rosenbaum, attorney for El Morro Community Assoc.

Barbara Bradley, Advanced Onsite Systems

Norm Hantzsche, Questa Engineering Corporation

Roger von Butow, South Orange County Watershed Conservancy

Mr. Vasquez made closing remarks. Board Members asked questions of Mr. Vasquez.

Mike Tope and Richard Rozelle answered questions asked by the Board.

The Public Hearing was closed.

After Board Member discussion, Ms. Ghio proposed approving staff's recommendation with a change to the discharge specifications that would postpone the nitrogen effluent limit.

Mr. Richards expressed his concern with Ms. Ghio's recommendation.

Ms. Ghio moved approval of Order No. R9-2003-0228 with a modification that would place the point of compliance at 150 feet from the point of discharge. There was not a second to the motion.

Mr. Wright moved approval of Order No. R9-2003-0228. The motion was seconded by Ms. Adams-Brooks and approved with opposition from Ms. Ghio and abstention from Mr. Minan.

Mr. Wright moved approval of Resolution No. R9-2003-0285 with a change to the date on Page 3, Item 4a to February 1, 2004. The motion was seconded by Ms. Adams-Brooks and approved with opposition from Ms. Ghio and abstention from Mr. Minan.

Mr. Stephany left the meeting at 2:40 and Chairman Minan took over as Chair of the meeting.

Item 13 - Settlement of liability against Ashby Homes for violation of SWRCB Order No. 99-08-DWQ, Waste Discharge Requirements for discharges of storm water runoff associated with construction activity, Roripaugh Ranch construction

site, Temecula, Riverside County. The Regional Board will consider accepting a proposed settlement for the liability. If the Regional Board decides to reject the settlement, the matter will be rescheduled to a future public hearing at which time the Regional Board will consider assessment of civil liability. (Tentative Resolution No. R9-2003-0302) (Rebecca Stewart)

Chairman Minan announced that the discharger was going to give a brief presentation. Peter Olah, Ashby Homes, gave the presentation.

Chairman Minan recommended continuing the item to insure compliance on site.

Joe Stone, City of Temecula, said he inspected the site and it was in compliance.

Rebecca Stewart answered questions asked by the Board.

Mr. Robertus recommended accepting the settlement offer.

Ms. Ghio moved approval of Order No. R9-2003-0302. The motion was seconded by Ms. Keller and approved with abstention from Mr. Wright.

Item 16 - Administrative Assessment of Civil Liability against Pioneer Builders for violations of the State Board's General Construction Storm Water Permit Order No. 99-08-DWQ, San Diego Region Basin Plan, and Cleanup and Abatement Order No. R9-2003-158 at the Castillo del Mar subdivision in Dana Point, California. The Regional Board will consider any offer of settlement of this matter or may deliberate and decide on assessment of civil liability based on testimony from the August 13, 2003 hearing. The Public Comment period is closed on this item. (Tentative Order No. R9-2003-0301) (Rebecca Stewart)

Board Members, John Richards and John Robertus discussed Ms. Tappan's earlier request (during the Public Forum) to reopen the Public Hearing and accept new information into the record. The Board invited Ms. Tappan to explain why she felt the Public Hearing should be reopened.

Pam Tappan, Save Our Wetlands Now, said she recently received critical information that the Board should hear.

After Board Member discussion with Mr. Richards it was decided that the Public Hearing would not be reopened.

Mr. Richards gave the Board a hand written settlement offer from the discharger for consideration.

After looking at the offer, Mr. Robertus recommended that the Board not accept the settlement offer.

Chairman Minan opened the item to Board discussion.

After Board Member discussion, they recommended lowering the fine to \$1,000 per day for 34 days for the first violation totaling \$34,000. The fine for failure to implement the storm water pollution prevention plan and BMPs was amended to \$1,000 per day for 32 days totaling \$32,000. The incomplete 401 application was established at 31 days at \$100 per day totaling \$3,100. The fine for failure to file was proved at 31 days at \$150 per day totaling \$4,650. The amended fine recommended totaled \$73,750.

Ms. Ghio moved approval of Order No. R9-2003-0301 with amendments. The motion was seconded by Mr. Anderson and approved with abstention from Ms. Adams-Brooks.

Item 17 - Waste Discharge Requirements: County of Orange, Prima Deshecha Landfill, Orange County (tentative Order No. R9-2003-0306) (Amy Grove)

Mr. Robertus introduced the item. Staff member Amy Grove gave the presentation and recommended approval of the order.

Chairman Minan asked what would happen if they didn't get the financial assurances. Mr. Richards said they would be in violation of their Waste Discharge Requirements then explained.

Chairman Minan asked questions about the ephemeral streambed. Ms. Grove replied.

Kevin Kondru, County of Orange, said they were in agreement with staff's recommendations.

Mr. Wright moved approval of Order No. R9-2003-0306. The motion was seconded by Mr. Ghio and approved by unanimous vote.

Item 4 (continued)

Michael McCann spoke about the inaugural meeting of the SD River Conservancy he and Chairman Minan attended earlier in the day and said the next meeting was going to be held in the Regional Board's office on December 5, 2003.

Item 18 - Information Item: Presentation on efforts to address water quality problems resulting from copper-based antifouling paints on recreational boats by Leigh Taylor Johnson, Marine Advisor, University of California, Sea Grant Extension Program (Pete Michael)

Senior staff member Pete Michael introduced the item and Ms. Leigh Johnson gave the presentation.

Mr. Robertus thanked Ms. Johnson for her presentation.

Mr. Wright left the meeting at 5:00 p.m.

Item 19 - Status Report: Framework of Grant Funded Water Quality and Beneficial Use Protection Programs--A Case Study Example from the City of Laguna Niguel, Orange County (David Gibson)

Mr. Robertus introduced the item and staff member David Gibson gave a presentation on the grants process.

Nancy Palmer, City of Laguna Niguel, gave a presentation on the WetCat Network Project.

Chairman Minan expressed his appreciation for the presentations.

Ms. Palmer answered questions asked by the Board.

Item 20 - Approval of Year 2004 Board Meeting Schedule (John Robertus)

Ms. Ghio moved approval of the 2004 schedule. The motion was seconded by Mr. Anderson and approved by unanimous vote.

Item 22 – *Executive Session* - Consideration of Initiation of Litigation
The Regional Board may meet in closed session to consider initiating criminal prosecution against persons who are alleged to have violated the Porter-Cologne Water Quality Control or the federal Clean Water Act.

The Executive Session was not held.

Item 24 – *Executive Session* - Personnel

The Regional Board may meet in closed session to consider personnel matters involving exempt employees [Authorized under Government Code Section 11126(a)]

The Executive Session was not held.

Item 25 - Arrangements for Next Meeting and Adjournment

Wednesday, December 10, 2003 - 9:00 a.m.
Water Quality Control Board
Regional Board Meeting Room
9174 Sky Park Court
San Diego, California

There being no further business, the meeting was adjourned at 5:27 p.m.

These minutes were prepared by:

Signature of Executive Officer:

Lori Costa
Executive Assistant

John H. Robertus